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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/618,472

07/11/2003

Lijiang Yang

AA-603M

5309

27752

7590

08/23/2006

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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EXAMINER

KRASS, FREDERICK F

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/618,472	YANG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Frederick Krass	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07/03/06 (RCE Filing).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Previous Rejections**

All previous rejections are withdrawn.

### **Obviousness Rejection**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rice (USP 5,589,160) in view of Muhler et al (USP 4,108,979).

The primary reference discloses dentifrices (*e.g.*, toothpastes) comprising 6 to 70 percent by weight (preferably 15 to 35 percent) precipitated silica abrasive (column 5, lines 4-9) and chelating agents, *e.g.*, 0.1 to 2.5 percent citrates or tartrates (column 6, lines 52-63), or 1.0 to 6.0 percent pyrophosphates (column 7, first paragraph). The dentifrices also contain 10 to 50 percent (preferably 20 to 40 percent) water (column 8, lines 12-20) and a fluoride salt (*e.g.*, sodium fluoride) in an amount sufficient to provide a fluoride ion concentration ranging from 0.0025 to 5.0 percent (column 7, lines 62-67); they have pH's falling within a preferred range of 7.0 to 8.5 (column 2, lines 40-44).

The primary reference differs from the instant claims insofar as it is silent regarding talc. It does suggest, however, that additional known dental abrasives may be included (column 4, lines 24-36).

The secondary reference teaches that talcs, both calcined and natural, are known dental abrasives. See column 4, lines 12-17; see also working examples IV and V at column 6. The talcs are incorporated into the dentifrices in preferred amounts of 20-40 percent by weight for gels and 20-70 percent by weight for toothpastes (column 4, lines 23-31) and are compatible with conventional silica abrasives, as taught at column 4, lines 19-23. The reference differs from the

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instant claims insofar as it is silent regarding chelating agents. (It also differs insofar as the dentifrices have lower pH values than those claimed instantly: see column 5, lines 16-29).

Selection of a known material based on its suitability for its intended use is generally *prima facie* obvious; see Sinclair & Carroll Co. v. Interchemical Corp., 325 US 327, 69 USPQ 297 (1945). (Claims to a printing ink comprising a solvent having the vapor pressure characteristics of butyl carbitol so that the ink would not dry at room temperature but would dry quickly upon heating were held invalid over a reference teaching a printing ink made with a different solvent that was nonvolatile at room temperature but highly volatile when heated in view of an article which taught the desired boiling point and vapor pressure characteristics of a solvent for printing inks and a catalog teaching the boiling point and vapor pressure characteristics of butyl carbitol. "Reading a list and selecting a known compound to meet known requirements is no more ingenious than selecting the last piece to put in the last opening in a jigsaw puzzle." 325 US at 335, 65 USPQ at 301). See also In re Leshin, 125 USPQ 416 (CCPA 1960) (selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious).

Consonant with the reasoning of the above-cited precedent, it would have been obvious to have selected a talc (calcined or natural) as the additional dental abrasive suggested by the primary reference, since talcs are materials known to be suitable for that intended purpose as taught by the secondary reference.

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### **Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick Krass whose telephone number is (571) 272-0580. The examiner can normally be reached on Monday-Friday from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached at (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frederick Krass  
Primary Examiner  
Art Unit 1614

